

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL NO. 1456

THIS DOCUMENT RELATES TO:

CIVIL ACTION: 01-CV-12257-PBS

BMS SETTLEMENT,
TRACK TWO SETTLEMENT, AND
ASTRAZENECA CLASS 2 AND 3
SETTLEMENTS

Judge Patti B. Saris

**CLASS PLAINTIFFS' FIFTH STATUS REPORT FOR
BMS, TRACK TWO AND ASTRAZENECA SETTLEMENTS**

A. Background

On November 30, 2010, the Court issued an Order for Final Consideration of the BMS Settlement (Dkt. No. 7313) and an Order for Final Consideration of the Track Two Settlement (Dkt. No. 7314) (collectively, the "November Orders"). The November Orders directed Class Counsel to provide monthly status reports "detailing the progress" of the BMS and Track 2 Settlements. This is the fifth such report. In addition, at the final approval hearing related to the AstraZeneca Class 2 and 3 Settlements on February 8, 2011, and in Class Plaintiffs' Fourth Status Report dated February 28, 2011, Class Counsel indicated that they would report to the Court on the progress of additional efforts to increase consumer participation in the AstraZeneca Class 2 and 3 Settlements. That report is included here.

B. BMS Proposed Settlement

The final fairness hearing was February 28, 2011. The Court heard argument, took the motion for final approval under advisement, and provided guidelines for an alternative Class 1

distribution formula based on actual damages with doubling or trebling the “Heartland” drugs for which the Court found liability in its post-Massachusetts Class 2 and 3 trial findings against BMS. The Court’s March 29, 2011 electronic order then directed that “Class counsel shall file additional briefs on the rebalancing for heartland damages, and documentation on the adequacy of the class representative on or before 4/8/11.” Class Counsel are diligently working on the issue, including reaching out to objector’s counsel, and will file their brief on April 8, 2011.

C. Track Two Proposed Settlement

As we previously reported, Rust mailed an initial notice to each of the approximately 2.2 million consumers identified in the CMS data. These consumers had until March 30, 2011 to return the reply card indicating they made cash or percentage co-payments. Each of the consumers responding will then be mailed a full notice with their pre-printed claim information. In addition, national media is scheduled to begin on April 4, 2011 to reach those consumers who will not receive direct mail notice. Neither Rust nor Class Counsel anticipate any delay in completing the notice process in accordance with the Court’s approved schedule. A final approval hearing is scheduled for June 13, 2011.

D. AstraZeneca Class 2/3 Approved Settlement

The final hearing on the AstraZeneca Class 2 and Class 3 Proposed Settlements (both Massachusetts and non-Massachusetts) took place on February 8, 2011. The Court thereafter endorsed final orders submitted by Class Counsel (Dkt. Nos. 7412 and 7413) and approved these settlements on February 22, 2011. No notice of appeal has been filed regarding these orders.

Following discussions with the Court about increasing consumer participation in the AstraZeneca Class 2 and 3 Settlement, and in accordance with paragraph 25 of each of the final approval orders, on February 28, 2011 Rust mailed a reminder letter to each of the approximately

65,000 consumers who did not respond to previous direct mail notices. The letter provided 30 days for consumers to respond and, in accordance with the direction provided by the Court, emphasized the ease with which consumer class members can claim the \$400 minimum payment. As of April 1, 2011 Rust had received a response from this mailing from 2,152 consumers. More responses are expected in the following days. This additional mailing brings the total number of consumer claims in the AstraZeneca Class 2 and 3 Settlement to 4,631.

E. The Next Status Report

Pursuant to the November Orders, Class Counsel will submit its next regularly-scheduled Status Report on May 1, 2011.

DATED: April 1, 2011

By /s/ Steve W. Berman
Thomas M. Sobol (BBO#471770)
Edward Notargiacomo (BBO#567636)
Hagens Berman Sobol Shapiro LLP
55 Cambridge Parkway, Suite 301
Cambridge, MA 02142
Telephone: (617) 482-3700
Facsimile: (617) 482-3003

LIAISON COUNSEL

Steve W. Berman
Sean R. Matt
Hagens Berman Sobol Shapiro LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594

Jennifer Fountain Connolly
Hagens Berman Sobol Shapiro LLP
1629 K St. NW, Suite 300
Washington, DC 20006
Telephone: (202) 355-6435
Facsimile: (202) 355-6455

Jeffrey Kodroff
John Macoretta
Spector, Roseman Kodroff & Willis, P.C.
1818 Market Street, Suite 2500
Philadelphia, PA 19103
Telephone: (215) 496-0300
Facsimile: (215) 496-6611

Kenneth A. Wexler
Wexler Wallace LLP
55 W. Monroe, Suite 3300
Chicago, IL 60603
Telephone: (312) 346-2222
Facsimile: (312) 346-0022

Marc H. Edelson
Hoffman & Edelson LLC
45 West Court Street
Doylestown, PA 18901
Telephone: (215) 230-8043
Facsimile: (215) 230-8735

CLASS COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, **CLASS PLAINTIFF'S FIFTH STATUS REPORT FOR BMS, TRACK TWO AND ASTRAZENECA SETTLEMENTS**, to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on April 1, 2011, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Steve W. Berman

Steve W. Berman